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SIPDIS

SENSITIVE

DEPT FOR E, EB, EB/IPE, EUR/WE  
DEPT PLS PASS USTR FOR JSANFORD/VEPINEL/RMEYERS  
COMMERCE FOR SJACOBS, SWILSON  
DOJ FOR CHARROP, FMARSHALL, RHESS  
COMMERCE PLEASE PASS USPTO

E.O. 12958: N/A

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SUBJECT: FRANCE'S DIGITAL COPYRIGHT BILL: EMBASSY EXPRESSES CONCERNS, GOF HOPES FOR THE BEST, BUT...

**¶1.** (SBU) SUMMARY. In response to our expressions of concern, the French government says it expects the Senate to improve some flawed elements of France's digital copyright legislation, but that it will probably not stiffen the decriminalized penalties for downloading and piracy. The bill, which the Senate will examine May 4-10, was passed by the National Assembly in February. The Prime Minister's media and audiovisual advisers told DCM April 24 that the GOF hoped to "inspire" the Senate to modify articles that would authorize private copies of DVDs and force interoperability among portable music devices. However, they noted that the bill was delicately balanced politically, and that the GOF hoped there would be a minimum amount of changes. Over the last month, Ambassador, DCM and Emboffs have consulted with U.S. industry representatives and members of the GOF, and encouraged them to continue to press key members of the government on this legislation. END SUMMARY.

**¶2.** (SBU) In the latest of our conversations with GOF officials on this troublesome legislation, DCM and Econoff met April 24 with Herve Digne and Eric Gross, Prime Minister Dominique de Villepin's advisors on media and audiovisual subjects. DCM noted U.S. industries' concerns over aspects of the bill, and expressed his hope that the GOF's door remains open to industry. Ambassador, DCM and Emboffs had previously both consulted with U.S. industry representatives as well as relayed broad U.S. industry concerns over the bill in private discussions with the Culture Minister, advisors in the Presidency, interlocutors in the Culture Ministry as well as private lawyers.

Timetable

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**¶3.** The legislation is to be debated in the Senate beginning on May 4, and running through May 10. Amendments are currently being accepted until May 2. The GOF expects some form of informal "reconciliation" between the Senate and the National Assembly version following the vote in the Senate, but not a full-scale French equivalent of a House-Senate Conference, nor a second reading in the Assembly. Implementing regulation will be needed following passage, but dates have not been determined for this yet.

**¶4.** (U) Digne and Gross told DCM they hoped to "inspire" the Senate to substantially modify two elements that present problems to U.S. (and French) industry: the right to a private copy of a DVD, and the concept of interoperability of portable music players. These changes would, Digne thought, satisfy industry concerns. Digne indicated that Senate staffers were probably less inclined to be political on this technical matter.

**¶5.** (SBU) However, Digne and Gross insisted that the proposed decriminalized penalties for downloading, currently an insignificant fine at 38 Euros, would not change for a number of reasons. DCM asked whether the GOF truly believed that fines like that could effectively be "dissuasive", as the EU directive requires. Digne argued that all countries were struggling with how to balance Internet freedoms with effective antipiracy policies. France had no resources or interest in pursuing one-time downloaders, which was expensive and counterproductive. Instead, it preferred to go after those who downloaded seriously and distributed; there, the basic fine was somewhat higher at 150 Euros (approximately USD 180). Digne denied that the French approach would be any less successful than that of other countries in Europe or elsewhere.

Need to Have a Law on the Books

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**¶6.** (SBU) Digne said France needed to move quickly in the absence of a legal framework and therefore there was no question of spending more time drafting and considering the law. France was already delinquent in its transposition of the 1997 EU directive, and needed to respond quickly or face difficulties with the European Commission. Also, under France's statute law, which he differentiated from US and UK common law traditions, Digne said it was absolutely necessary to have a law on the books as soon as possible. He admitted that it was difficult to come to terms

legally with the rapid evolution of technology, and that no approach was perfect. But he noted that the Government had built in a one-year evaluation period that required the administration to report to the Assembly after a year, with an evaluation of the law's functioning.

17. (SBU) DCM told Digne that U.S. industries were very concerned about the potential impact of this legislation on their business models and their considerable investments in France. France and the United States, he said, shared a common appreciation of the importance of creativity and artistic and cultural expression. Digne said that he and his colleagues had already exchanged views with a good number of U.S. industry representatives. The text constituted a "good balance" between the protection of authors' rights and the right of consumers to have access to creative works.

18. (SBU) Private-sector lawyers have told Embassy that many companies view the legislation as so unclear and poorly drafted, that the only way to make it clearer and more effective is via legal challenges brought after its passage. Others believe the European Commission is also likely to challenge the law, or should be encouraged to, when passed, in some form, as the legislation differs considerably from other EU member state transpositions of the Directive.

COMMENT

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19. (SBU) COMMENT. As expected, our GOF interlocutors offered very little hope that the digital copyright legislation would be rewritten or even drastically rethought. They indicated they remained open to drafting suggestions from U.S. industry that didn't upset the delicate political balancing act the government has engaged in since the controversial legislation was introduced in late 2005. Culture Minister Donnedieu de Vabre -- and perhaps even Prime Minister de Villepin -- is intent on moving this file off his desk as soon as possible, as it has been a political millstone for the government from the very beginning. We have encouraged U.S. industry to be proactive with French government officials and Senators, as many have already done. We have offered our good offices and suggestions to their representatives here and also urged them to make common cause with French industry in order to influence the Senate debate and the text. Embassy thanks Washington agencies' input and focus on this complex issue; Ambassador and Embassy will continue to press the issue privately at the highest level.

Stapleton